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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/537,253	06/01/2005	Daniel Bleau	010163-0002	1414

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EXAMINER	
BROWN, MICHAEL A	

ART UNIT	PAPER NUMBER
3772	

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09/19/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/537,253	BLEAU, DANIEL	
	Examiner	Art Unit	
	MICHAEL BROWN	3772	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *17 June 2008*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-20* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☒ Claim(s) *1-13* is/are allowed.

6)☒ Claim(s) *14-16,18 and 19* is/are rejected.

7)☒ Claim(s) *17 and 20* is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 14-15 are rejected under 35 U.S.C. 102(b) as being anticipated by Jalbert.

Jalbert discloses in figures 1-6 a shoe inner sole that anticipates a custom made foot orthosis for engagement inside of a footwear comprising a thermoformed flexible top layer 12, made of a first moldable synthetic rubber material (polyurethane), a thermoformed flexible reinforcement core layer 14, made of a moldable core material (polyethylene) that is made of a more rigid material than the top layer and a bottom layer 16 made of a second moldable synthetic rubber material (polyurethane). The moldable core material is made of a plastic (polyethylene).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Jalbert in view of Mardix.

Jalbert discloses in figures 1-6 a shoe inner sole that anticipates a custom made foot orthosis, substantially as claimed. However, Jalbert doesn't disclose the moldable synthetic rubber materials being made of a mixture of ethylene, vinyl and acetate. Mardix teaches in figure 1 a custom insole comprising a moldable synthetic rubber material made of a mixture of ethylene, vinyl and acetate (col. 2, lines 50-53). It would have been obvious to one having ordinary skill in the art at the time that the invention was made that the moldable synthetic rubber materials disclosed by Jalbert could be fabricated of EVA as taught by Mardix because it is a custom forming material that is supportive and durable.

Claims 18-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jalbert in view of Goldman.

Jalbert discloses in figures 1-6 a shoe inner sole that anticipates a custom made foot orthosis, substantially as claimed. However, Jalbert doesn't disclose an additional layer made of a moldable synthetic rubber material, or a heel cushion layer. Goldman teaches in figure 3 a feedback sensor device comprising an additional layer 66, made of a moldable synthetic rubber material and a thermoformed heel cushion layer 78. It would have been obvious to one having ordinary skill in the art at the time that the invention was made that the additional layer and the heel cushion layer as taught by Goldman could be incorporated into the device disclosed by Jalbert in order to use the additional layer and the heel cushion layer to provide additional support to the bottom of the user's foot.

Allowable Subject Matter

Claims 17 and 20 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 1-13 are allowed.

Response to Arguments

Applicant's arguments filed June 17, 2008 have been fully considered but they are not persuasive. Applicant argues that Jalbert doesn't disclose a custom made foot orthosis. However, clear if the foot orthosis disclosed by Jalbert is constructed to fit a person's foot that wears a size ten, then it is custom made for the person with a size ten foot. Clearly, the size ten isn't custom made for a person wearing a size eleven. Applicant argues that Mardix and Goldman don't remedy the deficiencies of Jalbert. However, Mardix was used as a modifier to provide a teaching of a moldable synthetic rubber being EVA. Goldman was used as a modifier to incorporate a feed back sensor into the foot orthosis.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MICHAEL BROWN whose telephone number is (571)272-4972. The examiner can normally be reached on 5:30 am-4:00 pm Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia Bianco can be reached on 571-272-4940. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Michael Brown/
Primary Examiner, Art Unit 3772